Calendar No. 169

99TH CONGRESS
1st Session

SENATE

REPORT
99-78

PROVIDING FOR THE ADJUDICATION OF CERTAIN CLAIMS OF U.S. NATIONALS AGAINST IRAN

JUNE 6 (legislative day JUNE 3), 1985.—Ordered to be printed

Mr. EVANS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 1166]

The Committee on Foreign Relations, to which was referred the bill (S. 1166) to facilitate the adjudication of certain claims of United States nationals against Iran, to authorize the recovery of costs incurred by the United States in connection with the arbitration of claims of United States nationals against Iran, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the prompt and efficient processing of certain claims made by U.S. nationals against the Government of Iran and to authorize the collection of a fee from successful claimants to offset certain of the expenses incurred by the U.S. Government in assisting these claimants.

COMMITTEE ACTION

S. 1166, the Iranian Claims Settlement Act, was introduced by Senators Evans and Lugar on May 17, 1985. A hearing chaired by Senator Evans was held on May 20, 1985. The following witnesses gave testimony:

Michael J. Matheson, Esq., Deputy Legal Adviser, Department of State.
Arthur Rovine, Esq., Baker & McKenzie.
Philip R. McKnight, Esq., Ivey, Barnum & O'Mara.
Timothy Dickinson, Esq., Gibson, Dunn & Crutcher.

51-010 O

S383-8

In addition, statements for the record were received from:

Stewart A. Baker, Esq., Steptoe & Johnson.

Markham Ball, Esq., Wald, Harkrader & Ross.

The Committee approved the bill on June 4, 1985 by a vote of 16-0. Senator Murkowski did not vote.

BACKGROUND

The Iranian hostage crisis was settled on January 21, 1981 with the signing of the Algiers Accords. Among other things, the Accords provided for the establishment of an international arbitral tribunal known as the Iran-United States Claims Tribunal. The Tribunal, consisting of three members appointed by the United States, three by Iran and three chosen by agreement of the two countries, has the authority to adjudicate claims of U.S. citizens and corporations against Iran arising out of debt, contract, expropriation and other measures affecting property rights. Tribunal awards are binding on the parties and are enforceable in the courts of any nation. Payment of the first award was made in June of 1982.

To assure payment of awards made to U.S. nationals a Security Account was established at a subsidiary of the Netherlands Central Bank using a portion of Iranian bank deposits which had been frozen in the United States. The initial amount deposited in the Account was $1 billion; the amount currently in the fund is $630 million. Interest on the Security Account is credited to a separate account and may be used by Iran to replenish the fund. Under the Accords, Iran has the responsibility to replenish the Security Account when payments to U.S. claimants cause the fund to fall below $500 million.

More than 3,800 claims have been filed with the Tribunal: some 2800 small claims (defined as claims under $250,000) and approximately 518 large claims of U.S. nationals against Iran; about 100 disputes between the two governments; and more than 400 claims of Iranian banks, based on letters of credit or disputed deposits in U.S. banks. There are also a number of claims against the U.S.

Large claims are expected to be settled only as a result of claimants pleading their cases before the Tribunal individually. Under the Accords the U.S. Government presents the small claims of U.S. nationals to the Tribunal. While the U.S. is prepared to go forward if necessary with the arbitration of each one of the more than 2800 small claims, it has been the intention of the State Department seek a negotiated settlement of the small claims "en bloc". If such a settlement is achieved, the most efficient way to divide the amount received in the "en bloc" settlement would be through adjudication by the Foreign Claims Settlement Commission, a component of the Department of Justice. The Commission has developed procedures for processing the claims of U.S. nationals against foreign governments.

The Accords provide that the costs of operating the Tribunal and maintaining the Security Account are to be shared by the U.S. and Iran. The U.S. Government's annual contribution to defray the costs of the Tribunal is approximately $2 million. The U.S. also

pays about $1 million annually to a subsidiary of the Netherlands Central Bank for managing the Security Account.

Besides these shared costs, the U.S. Government incurs additional expenses in connection with the Tribunal. These are costs associated with the representational and advisory services performed by the Office of the Legal Adviser in the Department of State. The Legal Adviser's Office represents the U.S. Government before the Tribunal, preparing and defending claims to which the U.S. is a party. For small claims, the Office processes the claim and formally presents it to the Tribunal. For large claims, it advises claimants' counsel on Tribunal procedure and precedent. The Office also briefs and argues legal issues common to all claimants.

A portion of the expenses borne by the Government inure to the benefit of private claimants. In recognition of this, the Administration has been deducting a fee of 2% from awards made by the Tribunal. To date, $6,860,000 has been collected. This fee was imposed pursuant to the Independent Office Appropriations Act (31 U.S.C. S 9701).

The Administration's authority to collect this fee has been challenged in the United States Claims Court by the Sperry Corporation, a successful claimant. In a May 1, 1985 ruling from the bench, Chief Judge Kozinski held that for technical reasons the fee did not meet the requirements of the Independent Office Appropriations Act. If Judge Kozinski's opinion stands, the Administration would be liable for refunds of the entire $6,860,000 it has collected; no additional fees could be assessed until the technical deficiencies Judge Kozinski found were corrected.

SECTION-BY-SECTION ANALYSIS

Section 2 authorizes the Foreign Claims Settlement Commission to adjudicate the small claims of U.S. nationals in the event of an "en bloc" settlement between the United States and Iran. The Commission is to exercise this authority in accord with Title I of the International Claims Settlement Act of 1949. This section is necessary because the Commission's authority is presently limited to claims "arising out of the nationalization or their taking of property" of U.S. nationals. Claims pending against the Government of Iran encompass additional matters.

Section 2 addresses several technical matters as well. It sets forth the standards the Commission is to apply in making awards. It also provides the method by which payment of an award is to be made. Ordinarily, a 5 percent fee is deducted from Commission awards to offset the Commission's costs of operation. Section 2 overrides this provision and directs that the fee be calculated in accordance with Section 3 of the Iran Claims Settlement Act.

Concern has been expressed that Section 2 gives the Commission the authority to adjudicate large claims if they were also settled "en bloc." The Administration has made it clear that it has no plans to seek such a settlement. Were this to change, the Committee expects that the Administration would seek additional legislative authority from the Congress. The Committee does not intend, in approving Section 2, to give the Commission authority to adjudicate any but the small claims following an "en bloc" settlement.

Section 3 contains express legislative authority for the collection of a fee from successful claimants. The Federal Reserve Bank of New York is directed to deduct the fee from the award prior to forwarding it to the claimant. The fee is to be deposited in the Treasury to the credit of miscellaneous receipts. This authority is made effective as of June 7, 1982, the date the Administration published its intent to collect a fee in the Federal Register (47 Fed. Reg. 2543).

The fee is set at 1½ percent of the first $5,000,000 awarded and 1 percent on amounts in excess of $5,000,000. In other words, on a successful claim of $6,000,000 the fee would be $8,500. This represents $7,500, 1½ percent of $5,000,000, plus $1,000, which is 1 percent of $1,000,000. For purposes of calculating the fee, principal, interest and costs awarded are lumped together.

This two-tier approach will require the Federal Reserve Bank of New York to calculate the amount to be deducted from awards. In the normal case, this will cause no difficulty, since the amount awarded to a specific claimant in a specific claim will be readily identifiable. Where, however, the Tribunal makes more than one award in one claim (for example, where it first renders a partial award and subsequently renders a final award), under Section 3 the Bank is to aggregate those awards in calculating the deduction. If the Tribunal renders an award covering more than one claim without specifying the amount awarded in each claim, the Bank is to calculate the fee based on the total amount awarded.

In approving Section 3 the Committee takes no position on Judge Kozinski's ruling in the Sperry litigation to the effect that the deduction pursuant to the Independent Office Appropriations Act was erroneous. The Committee does note that enactment of Section 3 would resolve the matter at issue in the Sperry case and any other pending cases which challenge the validity of the Administration's action under the Independent Office Appropriations Act. The Committee also notes that in the event Section 3 becomes law, the claimants which have had a 2 percent fee deducted would be entitled to a small refund. This refund would be made automatically pursuant to 31 U.S.C. S 1322.

Sections 4 and 5 are technical provisions. Section 4 insures that in the event of an "en bloc" settlement of small claims, no fee is levied on the settlement. Rather, the fee is to be collected as each individual award is made by the Foreign Claims Settlement Commission. Section 5 authorizes the Secretary of the Treasury to reimburse the Federal Reserve Bank New York for expenses the Bank has incurred in connection with the Algiers Accords.

Section 6 contains a limited exemption to the Freedom of Information Act for records relating to the arbitration of claims before the Tribunal. At present, the Department of State is unable to share certain information with claimants and their counsel because of the interaction of the rules of the Tribunal and the Freedom of Information Act. If the Department furnishes information to claimants, this information then becomes subject to general disclosure under the Freedom of Information Act. However, Tribunal rules require confidentiality. Thus, to avoid violating Tribunal rules, the Department must keep certain claims' related information from claimants.

The exemption contained in Section 6 permits information to be freely shared between the Department and claimants without risking disclosure under the Freedom of Information Act. It is narrowly drawn to include only "records pertaining to the arbitration of claims before the Iran-United States Claims Tribunal." Requiring that these records be available furthers none of the purposes of the Freedom of Information Act; exempting them from general disclosure will aid claimants in the prosecution of their claims.

MAJOR ISSUES CONSIDERED BY THE COMMITTEE

The sole controversy with respect to S. 1166 pertains to the imposition of a fee on successful claimants. Some claimants contend that no fee should be charged. They argue that no fee is imposed on litigants using state and federal courts. On the other side, the Administration urges that the flat 2 percent fee, the amount it imposed by regulation, be retained.

The Committee has opted for something between these two extremes. On the one hand, the Committee agrees with the Administration that those who benefit from the existence of the Tribunal and the services provided by the State Department should help bear the expense. On the other hand, the Committee agrees with critics of the flat 2 percent fee, including Judge Kozinski, who say that it fails to match costs with benefits. Clearly, at some point the relationship between the size of the claim and the benefit received declines. Based on the recommendations of the American Bar Associaton and others, the Committee determined that $5,000,000 was the appropriate dividing line.

The Committee bill establishes a two-tier fee schedule. On awards up to $5,000,000, 1½ percent is deducted; on amounts greater than $5,000,000, 1 percent is charged on the excess over $5,000,000. This 1½ percent—1 percent fee schedule also reflects a reduction on what the Administration would charge small claimants. The Administration seeks a 2 percent fee; the Committee felt that in view of the small size of these claims, averaging roughly $25,000, 1½ percent was fairer.

COST ESTIMATE

In accordance with rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimates of the cost of S. 1166, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 6, 1985.

Hon. RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1166, the Iran Claims Settlement Act, as ordered reported by the Senate Committee on Foreign Relations on June 4, 1985. The bill authorizes the recovery of part of the costs incurred by the United States government in connection with the arbitration of

claims of U.S. nationals against Iran, authorizes the Foreign Claims Settlement Commission to adjudicate certain claims against Iran should those claims be resolved by an en bloc settlement between the two governments, and otherwise deals with the settlement of claims against Iran.

Currently, a fee of 2 percent is collected by the Treasury on awards paid to U.S. nationals in settlement of their claims against Iran. However, no statutory justification exists for the collection of these fees. S. 1166 establishes the statutory basis for collecting these fees, and would facilitate the processing of such claims. The bill would reduce the rate to 1½ percent on the first $5 million of each award and to 1 percent on any additional amount. The reduction in the rate would be retroactive, that is, it would apply to all settlements paid after June 7, 1982. In affect, this would result in refunds to claimants who have already received their award and paid a 2 percent fee.

CBO estimates that S. 1166 would yield Iranian claim fees of almost $2 million each year. This is based on the assumption that all claims are settled and awards paid within the projection period, that is, by fiscal year 1990. Refunds mentioned above are likely to be returned to claimants before the end of fical year 1985, and so would result in a net revenue loss of just less than $1 million in that year. From 1986 through 1990, the fees would increase revenues by $2 million annually.

If you have any questions, please feel free to contact me, or your staff may wish to contact Neil Fisher or Joe Whitehill.

With best wishes,

Sincerely yours,

RUDOLPH G. PENNER,
Director.

EVALUATION OF REGULATORY IMPACT

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has reviewed the regulatory impact of S. 1166. The Committee has found that there will be only a slight impact and that this impact will fall almost entirely on the Executive branch. The Committee believes the benefits from enacting the bill far outweigh this slight additional regulatory burden.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by this bill. The entire bill consists of additions to current law.

○